

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/904,794	GERMICK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven L. Weinstein	1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Response filed 5/8/06 and the Interview of 7/19/06.
2. ☒ The allowed claim(s) is/are <sup>ss</sup> 28-29 and 32-54, renumbered claims 1-32, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br/>Paper No./Mail Date _____</li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br/>of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date <u>7/19/06</u> .</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____.</li> </ol> |
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### EXAMINER'S AMENDMENT

Pursuant to a telephone conversation with Mr. Kamrath on 7/18/06, the following changes were agreed upon, which changes places this application in condition for allowance.

Claim 21 has been cancelled and new claim 55 substituted therefore as follows:

-- Claim <sup>1</sup>~~55~~ 55. Method for producing a food item having an irregular and random pattern of a food ingredient contained therein comprising: flowing a flowable food product through a fill tube in a flow direction; and introducing a food ingredient into the flowing flowable food product in the fill tube through an entry point in the form of a first duct formed in a supply tube spaced from a free end of the supply tube, with the supply tube being formed by an annular wall extending from outside the fill tube to the free end of the supply tube inside the fill tube, and the annular wall having an inner surface and an outer surface spaced from each other by the thickness of the annular wall, said flowing the flowable food product through said fill tube comprising flowing the flowable food product through said fill tube to contact the outer surface of said annular wall of said supply tube; said introducing the food ingredient into the flowable food product comprising flowing the food ingredient within the inner surface of said annular wall of said supply tube, with the first duct creating a channel and extending through the annular wall of the supply tube from the inner surface to the outer surface of the supply tube to provide fluid communication between the supply tube and the fill tube through the thickness of the annular wall of the supply tube; said first duct extending through the

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annular wall of the supply tube at an acute angle with the longitudinal axis of the supply tube in the upstream direction opposite to the flow direction of said flowable food product; said free end of the supply tube and said first duct formed in said supply tube being located inside of the fill tube, with the supply tube extending into the fill tube in the flow direction of said flowable food product; said supply tube having a cross sectional size considerably smaller than the fill tube so as not to adversely affect the flowable food material flowing through the fill tube; said first duct terminating at the outer surface of said annular wall of said supply tube and not presenting a ledge in the fill tube behind which the flow of food product can build up, said first duct terminating at the inner surface of said annular wall of said supply tube and not blocking the flow of the food ingredient in the supply tube; said introducing the food ingredient comprising flowing the food ingredient through the supply tube in the flow direction of said flowable food product and through the first duct in said annular wall of said supply tube at said acute angle so that said food ingredient is introduced into the flow of flowable food product in said fill tube in a direction opposite to the flow direction of said flowable food product so that the food ingredient is introduced into the flowable food product in an irregular and random pattern which does not intermix throughout the flowable food material after the flowable food material passes through the fill tube. - -

In claims 22,25,29,32,41, and 54, line 1, "21" has been changed to read - - 55 - -;

The title has been changed to read - - Method For Making A Patterned Food

Product - -;

Steve Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
7/19/06

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### Reasons For Allowance

Upon further consideration, the art taken as a whole does not fairly teach or suggest adding a food ingredient to a flowing flowable food product by flowing the food ingredient in a supply tube inside a filling tube and allowing the flowing food ingredient to flow from inside the supply tube to outside of the supply tube and into the fill tube through a duct in the supply tube which is at an acute angle opposite to the flow direction of both the food product and the food ingredient in the fill tube and supply tube, respectively, so that the food ingredient is introduced into the flow of food product opposite to the flow direction of the food product, forming an irregular and random pattern in the food product.

Steve Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER  
7/19/06 1761